* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: April 03, 2007.
Date of decision: April 18, 2007.

\+ W.P.(C) 6277-80/2006 & CM No.5151/2006(Stay)

SANTOSH KUMAR & ORS. ..... Petitioners
Through Mr. B.K.Sood and Mr. Yogesh Kumar Bhatt, Advocates.

versus

D.D.A. ..... Respondent
Through Mr. Rajesh Pathak, Advocate.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

JUDGMENT

: Dr. S. Muralidhar, J.

1. The challenge in this writ petition is to a letter dated 12.11.2004 issued by the Delhi Development Authority ('DDA') to the petitioners informing them of the cancellation of the allotment of plot No.20 Pocket 6, Sector A-10 measuring 209 sq.m. in the Narela Residential Scheme. The writ petition also challenges a letter dated 21.2.2006 issued by the DDA informing petitioner No.1 that the Competent Authority had rejected his

request for revoking the cancellation.

2. The land of petitioner No.1 Santosh Kumar and his elder brother Shri Prem Kishan was acquired under the Land Acquisition Act, 1894 by an Award No. 202/86-87. By a letter dated 31.7.1989, the Government of National Capital Territory of Delhi recommended the allotment of an alternative plot to the petitioners and a letter to this effect was sent to the DDA. Pursuant to the recommendation, plot No. 93 pocket 15, Sector 19, Rohini measuring 209 sq.m. was allotted by the DDA to the petitioners by a letter dated 15.1.1993. Thereafter a corrigendum was issued on 12.2.1993 correcting the plot No. to read as plot No.93, pocket 16, Sector 20, Rohini. Admittedly, petitioner No.1 and his brother Shri Prem Kishan failed to make payment of the premium towards the said plot and the allotment stood cancelled by a letter dated 6.4.1994.

3. In terms of the policy of the DDA, a person recommended for allotment of an alternative plot is given three chances and the allotment by letter dated 15.1.1993 was the first chance. Petitioner No.1 and Shri Prem Kishan were again allotted plot No. 43, Sector A-5, pocket 12, Narela measuring 209 sq.m. in a

draw of lots held on 13.11.1999 and a second demand-cum-allotment letter dated 31.12.1989 was issued. Again there was a default in depositing the demanded amount resulting in a show cause notice dated 11.8.2000/ 12.3.2001 being issued by the DDA to the petitioners. Despite the show cause notice, payment was not made, resulting in the second allotment also being cancelled by the DDA by its letter dated 2.8.2001.

4. The fact of the first and second allotments is only mentioned in the passing in para 4 of the writ petition as under:

> "It is submitted that sometime in the year 1993, the petitioners were offered to be allotted a plot in Rohini. Since the allotment at Rohini was not in consonance with the policy of the DDA, whereby the plot to be allotted was to be allotted in the same area, where the land was acquired, of petitioner No.1 and his brother protested about the said allotment, which was, therefore cancelled. In the year 1999 another plot of land was also offered, which came to be cancelled in the year 2001."

5. By way of a third chance, the petitioner No.1 and Shri Prem Kishan were allotted a plot No.20, pocket 6, Sector A-10, Narela measuring 209 sq.m. in a draw of lots held on 29.5.2003. A demand-cum-allotment letter was issued to them on 26.6.2003. The petitioners failed to deposit the amount. As

regards the third allotment, the petitioners claimed that although the allotment letter dated 26.6.2003 was not received by them, petitioner No.1 went to the office of the DDA and collected it on 9.1.2004. It is claimed that at that time the petitioner also collected the letter dated 2.7.2003 issuing the corrigendum to the earlier letter dated 25.6.2003 indicating that the provisional rate adopted was for the year 2003-04.

6. On 12.7.2004 petitioner No.1 wrote to the DDA disputing the levy of cancellation charges in the sum of Rs.96,298/- and sought its waiver. It is claimed that an e-mail was thereafter sent on 5.3.2004 and to neither of these letters there was any response. By the letter dated 10.11.2004, the petitioner was informed that the allotment stood cancelled.

7. It is claimed that petitioner No.1 suffered a heart problem and petitioner No.2 from a brain stroke; that petitioner No.1 was out of India most of the time and that other petitioners not being aware of the developments, could not take any steps. It appears that the petitioners deposited on 10.11.2005 a sum of Rs.8,33,701/- with the DDA. By a letter of the same date, petitioner No.1 requested revocation of the cancellation of the

plot. When this request was turned down by the DDA by the second impugned letter dated 21.1.2006, the petitioners approached this Court.

8. It must be stated at the outset that only a passing reference has been made to the first and second allotments has been made in para 4 of the writ petition. The details of those allotments and the fact of the default committed by the petitioners in making payment towards those allotments has not been mentioned in the writ petition. Those facts have come to light only in the counter affidavit filed by the DDA. In the circumstances, the Court is constrained to observe that the petitioners have suppressed material facts in the writ petition and this should by itself disentitle them to relief. Nevertheless, since pleadings are complete and the matter has been argued at length, this Court proposes to deal with the merits of the case as well.

9. The respondent DDA has placed on record the policy concerning "regularisation of delay under alternative allotment in Rohini Residential Scheme." That policy envisages as under:

"No restoration shall be allowed beyond 180 days in case

of first two chances. However, in case of third draw (last chance)/restoration may be allowed subject to payment being made within a maximum period of 360 days after which the allotment would stand automatically cancelled. Reularisation up to 270 days shall be done at the level of Principal Commissioner and up to 360 days the case shall be reularised by the Vice Chairman."

10. The admitted position is that as regards the third chance, the payment of 25% was required to be made within 60 days thereafter, 50% premium within a further period of 60 days and the balance 15% "within 30 days from the date of issue of demand letter for this premium was within 2 months on receipt of communication from the Authority offering possession whichever is earlier." On the petitioners own showing the money was deposited only on 10.11.2005, this was even beyond the 360 days time limit for which the case could be regularised by the Vice Chairman. Therefore there was absolutely no occasion for the DDA to invoke the policy and revoke the cancellation of the allotment.

11. Learned counsel for the petitioners states that despite the petitioners writing to the DDA on 12.1.2004 and 5.3.2004, a fact which is not denied by the DDA, no reply was received by them.

It is further claimed that the petitioners have not received any show cause notice before the cancellation of the allotment. It is further stated that since the earlier show cause notices were not received, the fact of that earlier cancellations was not mentioned in the writ petition. It is urged that the case requires sympathetic consideration. It is pointed out that even in the public notice published by the DDA in the newspaper, Petitioner No.1 is shown as a successful recommendee in respect of whom the allotment letter in respect of the third chance had been received back undelivered. Accordingly, it is submitted that the petitioners could not be held to be in default when admittedly the third allotment letter was not received by them.

12. The facts of the present case indicates that Petitioner No.1 himself collected the third allotment letter on 5.1.2004. The petitioners could therefore be in no doubt as to when the payment had to be made. In respect of making the payments, the Petitioner No.1 wrote to the DDA on 12.1.2004 questioning the cancellation charges in respect of the first allotment and offering to pay the cancellation charges as regards the second allotment. Clearly, therefore, the petitioners even at this stage, were not ready to avail of the third opportunity that had been

offered.

13. The records of the case have been perused. This Court finds that the decision not accede to the request of the petitioner in terms of the applicable policy was correct and does not call for interference. The impugned decision of the DDA cannot be termed to be unreasonable or arbitrary.

14. The writ petition is dismissed with no order as to costs. The application is also dismissed.

S. MURALIDHAR, J

APRIL 18, 2007
dn